

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

TRUCOOK, INC.

Plaintiff,

v.

INTERNATIONAL BUSINESS CORPORATION

Defendant.

02C 4617

Civil Action No.:

Judge

JUDGE ANDERSEN

Jury Deliberation

MAGISTRATE JUDGE
GERALDINE SOAT BROWN

DOCKETED

JUN 28 2002

COMPLAINT

Plaintiff TRUCOOK, INC, ("TRUCOOK") for its Complaint against
INTERNATIONAL BUSINESS CORPORATION ("IBC"), states as follows:

JURISDICTION

1. This Court has subject matter jurisdiction over this Complaint by virtue of Title 28 U.S.C. §§ 1331 and 1338, Title 15 U.S.C. §1121(a) and under its supplemental jurisdiction of 28 U.S.C. §1367, the Counts of which concern acts of design patent infringement under 35 U.S.C. §1 *et seq.*; trade dress infringement under the Lanham Act 15 U.S.C. §1125(a); trade dress infringement under the common law of Illinois; trade dress dilution under the Illinois Anti-dilution Act, 765 ILCS §1036/65; and unfair competition and deceptive trade practices under the Uniform Deceptive Trade Practices Act, 815 ILCS §510/1 *et seq.*, the Consumer Fraud and Deceptive Business Practices Act, 815 ILCS §501/1 *et seq.*, and the common law of Illinois.

2. Venue is proper in this District under 28 U.S.C. §1391(b) and (c).

THE PARTIES

3. Plaintiff TRUCOOK, INC. ("TRUCOOK") is a Florida corporation having its principal place of business at 1500A Elizabeth Avenue, West Palm Beach, Florida 33401.

4. Defendant INTERNATIONAL BUSINESS CORPORATION ("IBC"), upon information and belief, is a corporation having a principal place of business at 5705 Commerce Boulevard, Alpharetta, Georgia 30004.

5. This Court has personal jurisdiction over Defendant IBC, by virtue of, among other bases, 735 ILCS §5/2-209 (a)-(c), in that Defendant has, with respect to the present case, transacted business in the State of Illinois, engaged in tortious acts within the State of Illinois and/or has contacts with the State of Illinois, all commensurate with the United States and Illinois Constitutions, so as to submit itself to the jurisdiction and process of this Court.

FACTUAL BASIS FOR THE PRESENT ACTION

6. Plaintiff TRUCOOK introduced its first temperature sensing fork for cooking various meat and fish items at a housewares trade show in Chicago on or about January of 1998. That fork is shown in Exhibits A and B.

7. Plaintiff's fork is a unique combination of non-functional elements, which together create an overall, distinctive impression which designates TRUCOOK as the source of the product. In particular, Plaintiff TRUCOOK's temperature sensing fork includes the following elements:

- (1) the shape of the handle;
- (2) the shape and positioning of the handle cap;

- (3) the substantially rectangular label recess in the upper front portion of the handle;
- (4) the elongated tapered window substantially centered in the front side of the handle;
- (5) a "Press Here" button positioned in the top of the elongated tapered window;
- (6) six lenses running down the left side of the elongated tapered window, each of which can be illuminated;
- (7) doneness settings positioned to the right of each one of the six lenses in the elongated tapered window, with horizontal underscores positioned below doneness setting;
- (8) the neck and fork head configuration;
- (9) silver conical tips on each of the fork tines;
- (10) a substantially rectangular label window in the rear side of the fork handle bearing a temperature chart with doneness settings and corresponding temperature ranges in both Fahrenheit and Celsius; and
- (11) a total fork length of 11" - 11 1/2".

8. At the very outset, Plaintiff's new product was well received by the marketplace, as a number of large national retailers expressed immediate interest in carrying TRUCOOK's fork nationwide. In light of the interest expressed by the large national retailers, and because TRUCOOK believed that it had developed a quality product that was both consumer-friendly and affordable, TRUCOOK set out to develop a strong sales base, not only in Illinois, but throughout the United States. Accordingly, TRUCOOK targeted the entire country in a multi-media promotional and advertising campaign to demonstrate the quality and value of the product sold under its federally registered trademark "ThermoFork", while also establishing significant goodwill as the source for the temperature sensing fork product shown in Exhibits A and B.

9. Inasmuch as Plaintiff TRUCOOK wanted to both promote and protect the ornamental design of its temperature sensing fork product, Plaintiff TRUCOOK acquired rights in the design patent application filed on its temperature sensing fork product. On February 16, 1999, U.S. Design Pat. No. 405,705 (the '705 patent) issued for the invention entitled "Indicator Device and Utensil For Cooking Meat." A copy of U.S. Des. Pat. No. 405,705 is attached as Exhibit C.

10. Plaintiff has since acquired ownership of and still remains the owner of the '705 patent, and all right, title and interest associated therewith.

11. The validity, enforceability and infringement of Plaintiff TRUCOOK's '705 patent have been confirmed in the United States District Court for the Northern District of Illinois, over a substantially identical temperature sensing fork. In TruCook, LLC v. Consolidated Stores Corp. et al., Civil Action No. 00C 2296, Judge Robert C. Norgle entered a Stipulated Permanent Injunction on June 6, 2000 affirming the validity, enforceability and infringement of the '705 patent, enjoining defendants from infringing same.

12. TRUCOOK has also expended great time, effort and expense in marketing and developing rights in the unique, eye-catching trade dress and ornamental design of its innovative temperature sensing fork -- to establish valuable goodwill in the product design trade dress and to identify the distinctive and unique product design as that of TRUCOOK.

13. This publicity and marketing has included extensive T.V. commercials run throughout the United States, as well as advertising through magazines and other publications, designed to generate interest in and recognition with the TRUCOOK name

and TRUCOOK's unique product. To date, Plaintiff TruCook has spent over \$1,000,000 in promoting and marketing its patented temperature sensing fork, including over \$900,000 in television advertising alone.

14. Indeed, Plaintiff TRUCOOK has linked its publicity and advertising efforts directly to its proprietary fork design with a red "AS SEEN ON TV" box on its packaging hang card, to assure purchasers that the TRUCOOK product is indeed the one shown on television as the TRUCOOK temperature sensing fork. See Exhibit D.

15. Further, Plaintiff has also aggressively marketed its fork to large national retail stores, such as Lowe's, Walgreens, Target, Meijers, Wal-Mart, Bed, Bath & Beyond, Ace Hardware, Kohl's and Brookstone. All of these stores have carried the proprietary TRUCOOK temperature sensing fork product.

16. As a result of these extensive sales and promotional efforts, Plaintiff's unique fork design has acquired distinctiveness and become known and recognized as signifying Plaintiff TRUCOOK and its temperature sensing fork product. This source designation has allowed TRUCOOK to enjoy invaluable goodwill, a reputation for the highest standards of quality, and has resulted in sales of almost \$9,000,000 of the patented temperature sensing fork product -- and a continuous demand for these products originating from Plaintiff TRUCOOK.

17. The United States District Court for the Northern District of Illinois has likewise affirmed the validity, enforceability and infringement of Plaintiff TRUCOOK's product design trade dress, over the same substantially identical temperature sensing fork, in its Stipulated Permanent Injunction of June 6, 2000 in TruCook, LLC v. Consolidated Stores Corp. et al., Civil Action No. 00C 2296, with Judge Norgle finding

that Plaintiff's product design trade dress is protectable, has acquired secondary meaning and is non-functional.

DEFENDANT'S INFRINGING PRODUCT

18. Shortly after learning that one of its largest customers, Lowe's, cancelled orders for temperature sensing forks from TruCook, Plaintiff learned that Lowe's was instead acquiring a temperature sensing fork substantially identical to Plaintiff TruCook's patent and trade dress from Defendant IBC.

19. The substantially identical temperature sensing fork, shown in Exhibits E and F, like Plaintiff TRUCOOK's fork, is packaged with an accompanying hang card for easy merchandising display and customer access.

20. Upon viewing the fork distributed by Defendant IBC, Plaintiff TRUCOOK immediately recognized a fork design nearly identical to Plaintiff's own patented and trade dress protected design. Defendant IBC's temperature sensing fork product is virtually the exact same size and shape as Plaintiff TRUCOOK's fork, with precisely the same handle shape, the same handle cap, the same elongated tapered oval window, the same positioning of the elongated tapered oval window in the front of the handle, and substantially the same neck and fork head configurations. Moreover, Defendant's fork also incorporates a "Press Here" button in the top of the elongated tapered oval window, six lenses running down the left side of the elongated tapered oval window, the six identical doneness settings to the right of each of the six lenses and horizontal underscores beneath each doneness setting. Indeed, the only difference between the two forks is Defendant's removal of a small, functional finger guard flange between the handle and the neck portions of Plaintiff's fork.

21. Plaintiff TRUCOOK further noticed Defendant's use of a rectangular label window with rounded corners on the upper front portion of the handle, in which a label was placed designating a name for the fork -- a label window identical to that of Plaintiff's own fork.

22. Likewise, upon turning Defendant's fork over, Plaintiff TRUCOOK recognized another, larger rectangular window in the upper backside portion of the fork handle identical to that designed into its own protected fork. In that window, Defendant IBC placed a label with the doneness settings in the front of the fork and corresponding temperature ranges in Fahrenheit. All the text is in bold lettering, with doneness settings in all capitols. Not coincidentally, the doness settings and temperature ranges are identical to those found on Plaintiff TRUCOOK's product back label.

23. Further, Plaintiff TRUCOOK recognized the mold lines running down each side of the fork handle, neck and head portions as identical to those found on its own temperature sensing fork. Upon even further detailed inspection of the Defendant's fork, Plaintiff TRUCOOK discovered that the housing structure included repeated molding "fingerprints" identical to that of Plaintiff TRUCOOK's fork -- leaving no doubt that the Defendant's fork was substantially splash-molded from Plaintiff TRUCOOK's product and tailored to duplicate the total, overall visual impression of the non-functional elements of Plaintiff TRUCOOK's unique, eye-catching product.

24. Clearly, Defendant is attempting to misappropriate Plaintiff TRUCOOK's patented product design and trade-dress-protected product design -- to palm off its own goods as those of Plaintiff TRUCOOK. Defendant's acts have been willful and wanton and have been undertaken in an attempt to capitalize on the extensive goodwill built by

Plaintiff TRUCOOK through its unique fork product design, and to exploit Plaintiff's extensive advertising and promotion of its products.

COUNT I
Design Patent Infringement

25. This Count of the Complaint arises under an action for damages and injunctive relief pursuant to a violation of the Federal Patents Laws, Title 35 U.S.C. §1 *et seq.*, and particularly, under 35 U.S.C. §271, 281, 283-285 and 289, towards injunctive relief in the destruction of the infringing products, as well as recovery of Defendant's profits, Plaintiff's lost profits, total damages and the cost of this suit, including reasonable attorneys' fees against Defendant, for the injuries sustained by Plaintiff TRUCOOK. Plaintiff herein adopts and reaffirms allegations of Paragraphs 1 - 24.

26. United States Design Pat. No. 405,705 is *prima facie* evidence of Plaintiff TRUCOOK's exclusive right to manufacture, have manufactured, use, sell or offer to sell products having the fork design covered by the '705 patent.

27. Plaintiff TRUCOOK has the extremely valuable exclusive right to manufacture, have manufactured, use, sell, and offer to sell, throughout the United States, products covered under the '705 patent.

28. Plaintiff's temperature sensing forks covered by the '705 patent have obtained widespread commercial success in the United States.

29. Defendant IBC has been and/or is still infringing the '705 patent by selling, or offering for sale, indicator devices and utensils for cooking meat as claimed in the

'705 patent, in this judicial district and elsewhere, and will continue to do so unless and until enjoined by this Court.

30. An ordinary observer would be deceived by reason of the overall substantial similarity of the claimed ornamental features of the '705 patented temperature sensing fork and Defendant's temperature sensing fork, inducing a purchaser to buy Defendant's product supposing it to be Plaintiff's product. Defendant's temperature sensing fork also contains substantially the same points of novelty found in the patented '705 fork design, which distinguishes the patented temperature sensing fork from the prior art.

31. Defendant's temperature sensing fork utilizes the patented design of the '705 patent, or a colorable imitation of it. Defendant has directly infringed the '705 patent, and, as will likely be shown after reasonable opportunity for investigation and discovery, has contributed to the infringement of and/or has induced others to infringe the claim of the '705 patent. Defendant is continuing to infringe in violation of 35 U.S.C. §271.

32. Defendant has willfully and wantonly infringed the '705 patent, entitling Plaintiff to treble damages under 35 U.S.C. §284. This conduct further warrants the finding that this case is exceptional under 35 U.S.C. §285, entitling Plaintiff to an award of its attorney's fees.

33. Defendant will continue to infringe the '705 patent, unless and until enjoined by this Court.

34. By reason of Defendant's infringement of the '705 patent, Plaintiff has suffered and will continue to suffer substantial irreparable damage and injury, the full

extent of which is currently unknown. Defendant has also benefited from the unlawful infringement and will continue to be unjustly enriched, unless and until enjoined by this Court.

COUNT II
Federal Trade Dress Infringement

35. This Count of the Complaint arises under an action for damages and injunctive relief pursuant to a violation of the Federal Laws on Trade Dress Infringement and False Designation of Origin under 15 U.S.C. §1125(a) *et seq.* Plaintiff herein adopts and reaffirms the allegations of Paragraphs 1-34.

36. By misappropriating the unique, non-functional overall design of Plaintiff TRUCOOK's fork product, Defendant has used in commerce, in connection with Defendant's product, a false designation of origin which is intended to cause, has caused, and is likely to cause confusion, or to cause mistake, or to deceive consumers, retailers or distributors as to the affiliation, connection or association of Defendant with Plaintiff TRUCOOK, or as to the origin, sponsorship or approval of Defendant's product and commercial activities by Plaintiff TRUCOOK.

37. Plaintiff TRUCOOK has performed extensive marketing and advertising for its unique, temperature sensing fork and has sold large quantities of its distinctive temperature sensing fork design. Through each, Plaintiff's product design trade dress has acquired secondary meaning and has become impressed upon the minds of the trade and public as identifying the goods of Plaintiff and indicating the source of origin of Plaintiff's products. Plaintiff TRUCOOK has built up a large and valuable business in

its use of that product design trade dress, and the valuable goodwill generated as a result of that business inures to Plaintiff, and Plaintiff alone.

38. All of Defendant's actions are without Plaintiff TRUCOOK's consent and constitute blatant, willful and wanton infringement and disregard of Plaintiff's trade dress rights.

39. By reason of and by direct result of these acts of trade dress infringement and false designation of origin/passing off by Defendant, Plaintiff TRUCOOK has suffered great and irreparable damage, the full extent of which is currently unknown, while Defendant positions itself for unjust enrichment at Plaintiff's substantial expense. Plaintiff will continue to suffer great and irreparable damage unless and until Defendant is enjoined by this Court.

COUNT III
Common Law Trade Dress Infringement

40. This Count of the Complaint arises under an action for damages and injunctive relief pursuant to a violation of the Common Law of the State of Illinois on Trade Dress Infringement. Plaintiff herein adopts and reaffirms the allegations of Paragraphs 1-39.

41. Plaintiff TRUCOOK has sold substantial quantities of its distinctive temperature sensing fork products. Plaintiff's product design trade dress has become impressed upon the minds of the trade and public in Illinois to identify the goods of Plaintiff TRUCOOK as the source of origin for the products so sold and provided. Plaintiff has built up a large and valuable business in its use of its trade dress product design and the goodwill that inures to Plaintiff, and Plaintiff alone, is of great value.

42. Defendant has used and continues to use Plaintiff's product design in Illinois for the express purpose of redirecting individuals attempting to purchase Plaintiff's products to those products of Defendant instead. Meanwhile, Defendant conceals the lack of affiliation with Plaintiff TRUCOOK and the actual owner of the product design trade dress. Through the use of Plaintiff TRUCOOK's trade dress, Defendant has palmed off its goods as those of Plaintiff TRUCOOK.

43. Defendant's use of Plaintiff's protected product configuration trade dress has already caused and is likely to further cause, confusion, mistake and/or deception as to the affiliation, connection or association of Defendant with Plaintiff TRUCOOK, or as to the origin, sponsorship or approval of Defendant's products or commercial activities by TRUCOOK.

44. By reason and as a direct result of these acts of infringement and unfair competition by Defendant, Plaintiff has suffered great and irreparable damage, the full extent of which is currently unknown, while Defendant positions itself for unjust enrichment at Plaintiff's substantial expense. Plaintiff will continue to suffer great and irreparable damage unless and until Defendant is enjoined by this Court.

COUNT IV
Illinois Anti-Dilution Act

45. This Count of the Complaint arises under an action for damages and injunctive relief pursuant to a violation of the Illinois Law on Unfair Competition, particularly 765 ILCS §1036/65. Plaintiff herein adopts and reaffirms allegations of Paragraphs 1-44.

46. Plaintiff's product design trade dress has been used exclusively, extensively and abundantly throughout Illinois and the country, in close association with Plaintiff's goods such that Plaintiff's trade dress has become and is now distinctive and famous in at least the State of Illinois.

47. Defendant's use of Plaintiff's protected trade dress has caused a dilution of the distinctive quality of Plaintiff's trade dress and has lessened the capacity of Plaintiff's trade dress to identify and distinguish the goods and services of Plaintiff TRUCOOK.

48. By reason of and as a direct result of these acts of trade dress dilution by Defendant, Plaintiff has suffered great and irreparable damage, the full extent of which is currently unknown, while Defendant is unjustly enriched at Plaintiff's substantial expense. Plaintiff will continue to suffer great and irreparable damage unless and until Defendant is enjoined by this Court.

COUNT V
Deceptive Trade Practices

49. This Count of the Complaint arises out the acts of Unfair Competition under the Common Law of the State of Illinois, the Uniform Deceptive Trade Practices Act, 815 ILCS §510/1 *et seq.*, and the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS §505/1 *et seq.* Plaintiff herein adopts and reaffirms allegations of Paragraphs 1-48.

50. Defendant has used product designs nearly identical to that of Plaintiff TRUCOOK in commerce in order to draw business and sales away from Plaintiff.

51. Defendant's misleading use of Plaintiff's trade dress product design causes a likelihood of confusion and misunderstanding as to an affiliation, connection, or association of Defendant with Plaintiff TRUCOOK when, in reality, none exists.

52. Defendant's use of Plaintiff's trade dress falsely represents that Defendant and its goods have an affiliation with, sponsorship by and/or approval by Plaintiff TRUCOOK.

53. Through its use of Plaintiff's distinctive trade dress, Defendant has passed off its goods as emanating from Plaintiff TRUCOOK.

54. By reason of and as a direct result of these acts of deceptive trade practices by Defendant, Plaintiff has suffered great and irreparable damage, the full extent which is currently unknown, while Defendant is unjustly enriched at Plaintiff's substantial expense. Plaintiff will continue to suffer great and irreparable damage unless and until Defendant is enjoined by this Court.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff TRUCOOK prays:

A. That Judgment be entered against Defendant INTERNATIONAL BUSINESS CORPORATION in favor of Plaintiff TRUCOOK.

B. For judgment and permanent injunctive relief to be entered by this Court in favor of Plaintiff and against Defendant for Federal patent infringement;

C. For a recovery for damages adequate to compensate Plaintiff for Defendant's acts of patent infringement in the amount of at least \$1,000,000;

D. For an accounting and recovery of damages adequate to compensate Plaintiff for Defendant's infringement of the '705 patent under 35 U.S.C. §284;

E. For Defendant's profits resulting from Defendant's sale of products infringing the '705 patent;

F. For Plaintiffs' lost profits resulting from Defendant's sale of products infringing the '705 patent;

G. For a finding that Defendant's patent infringement is willful and wanton, such that Plaintiff is entitled to a trebling of damages pursuant to 35 U.S.C. §284;

H. For a finding that Defendant's willful and wanton acts make this an exceptional case under 35 U.S.C. §285, and for a recovery of Plaintiff's reasonable costs, attorney's fees and expenses;

I. For Judgment and permanent injunctive relief to be entered by this Court in favor of Plaintiff against Defendant for trade dress infringement;

J. For a recovery of damages adequate to compensate Plaintiff for acts of trade dress infringement and unfair competition in the amount of at least \$1,000,000;

K. For an Order prohibiting Defendant from filling any orders or from providing any third parties with products which comprise or contain any trade dress enjoined by this Court;

L. For an Order directing Defendant to file with this Court and serve on counsel for Plaintiff TRUCOOK within 30 days after entry of any injunction issued by the Court in this action, a sworn written statement as required under 15 U.S.C. §1116;

M. For an Order directing Defendant to recall from its customers and to deliver for destruction or other disposition within thirty (30) days of the entry of final judgment herein, any and all promotional items, products and/or advertising or other

materials in its possession or control which comprise or contain any trade dress enjoined by this Court under 15 U.S.C. §1118;

N. For a finding that Defendant's acts of trade dress infringement and unfair competition were willful and wanton, such that Plaintiff is entitled to exemplary damages under 15 U.S.C. §1117, corresponding to a trebling of the actual damage as, in the amount of at least \$3,000,000, or an amount this Court finds just, to deter Defendant from future unfair competitive and infringing conduct, and punitive damages as authorized under state law;

O. For a finding that Defendant's willful and wanton acts make this an exceptional case under 15 U.S.C. §1117 toward recovery of Plaintiffs' reasonable attorney's fees, costs and expenses;

P. For judgment and permanent injunctive relief to be entered by this Court in favor of Plaintiff and against Defendant for common law trade dress infringement and trade dress dilution under the Illinois Trademark Registration and Protection Act;

Q. For recovery of damages adequate to compensate Plaintiff for Defendant's acts of trade dress infringement and dilution in the amount of at least \$1,000,000;

R. For a finding that Defendant's acts of trade dress infringement and dilution were committed knowingly and/or in bad faith, such that the Plaintiff is entitled to exemplary damages under 765 ILCS §1036/70, corresponding to a trebling of the actual damages in the amount of at least \$3,000,000, or an amount this Court finds just, to deter Defendant from future infringing and dilutive conduct, and punitive damages as authorized under Illinois State law;

S. For a finding that Defendant's infringing and dilutive acts were committed knowingly or in bad faith, such that Plaintiff is entitled to recovery of three times Plaintiff's reasonable attorney's fees, costs and expenses under 765 ILCS §1036/70;

T. For recovery of damages adequate to compensate Plaintiff for Defendant's acts of deceptive business and trade practices in the amount of at least \$1,000,000;

U. For judgment and permanent injunctive relief to be entered by this Court in favor of Plaintiff and against Defendant for deceptive business and trade practices;

V. For a finding that Defendants have willfully engaged in deceptive trade practices, such that Plaintiff is entitled to an award of attorney's fees and costs under 815 ILCS §510/3; and

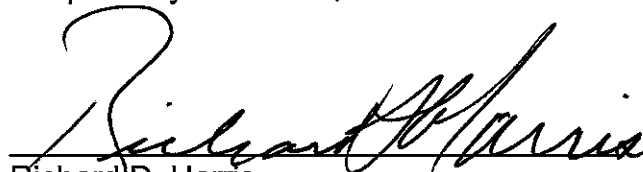
W. For such other and further relief that the Court may deem just and proper.

JURY DEMAND

Plaintiff TRUCOOK respectfully demands a trial by jury for all Counts of this COMPLAINT.

Dated: 6/27/02

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Richard D. Harris", written over a horizontal line.

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James K. Cleland
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Tel: 312/726-4000
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Attorneys for Plaintiff TRUCOOK, INC.

EXHIBIT A

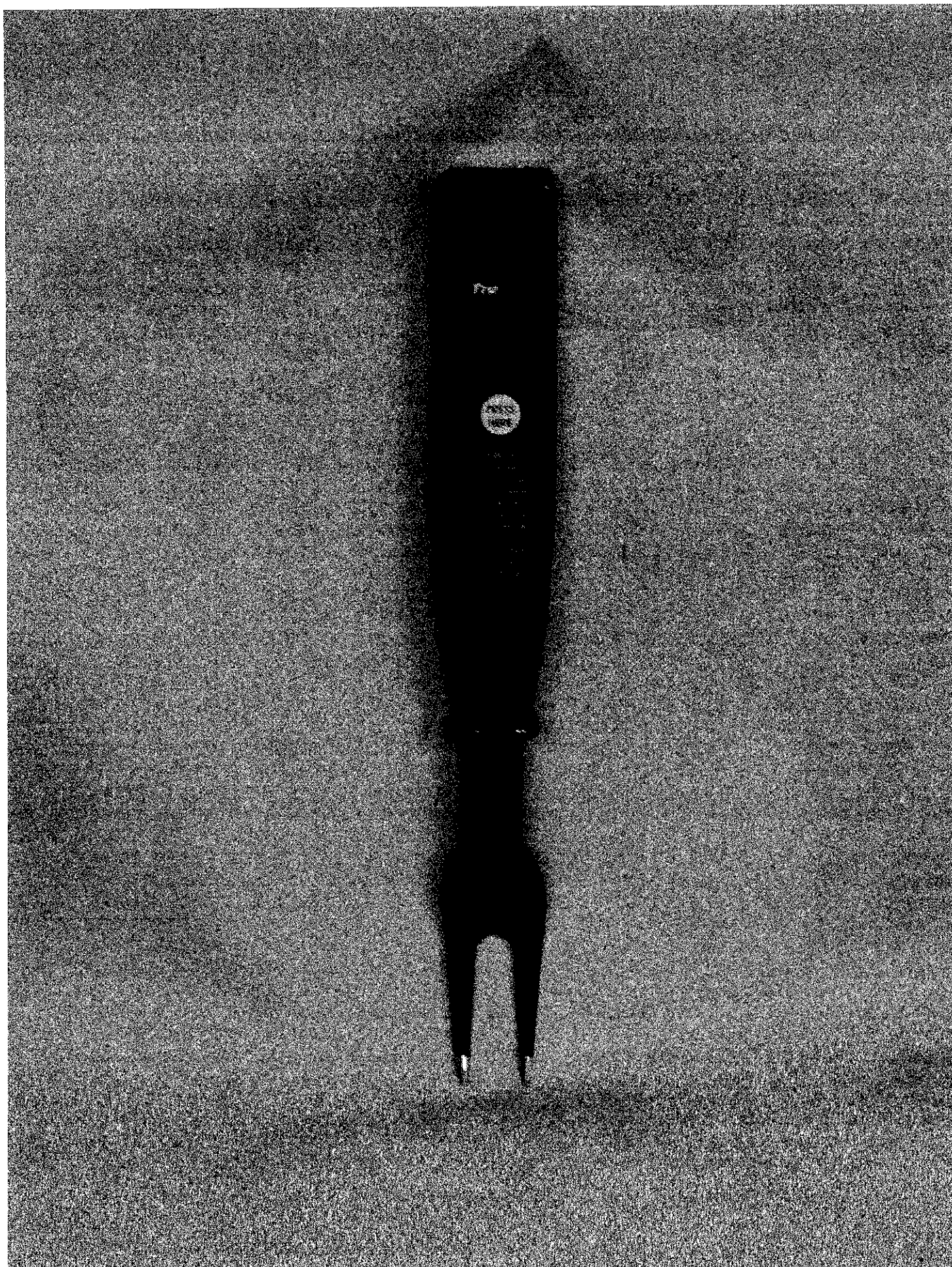


EXHIBIT B

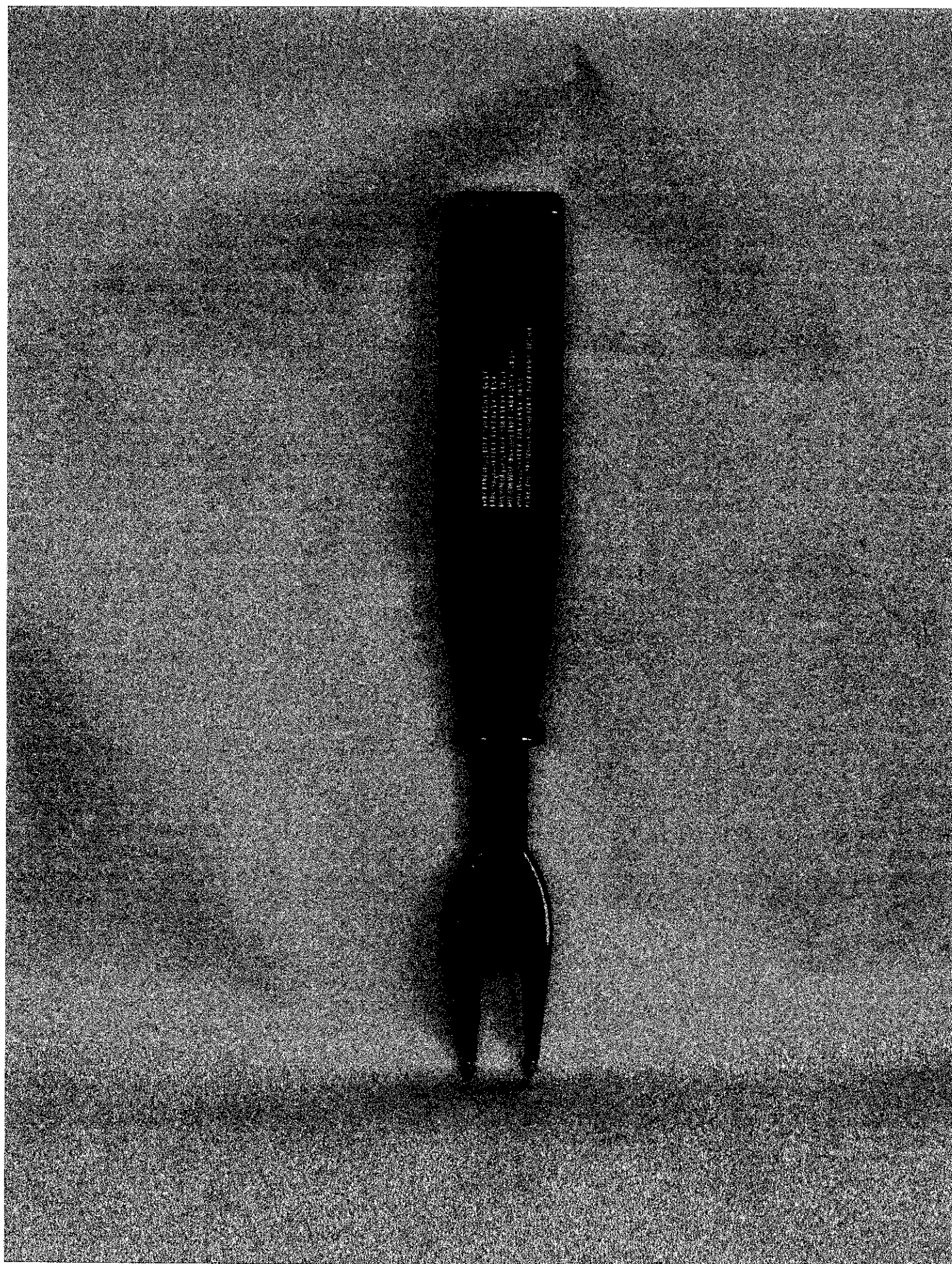


EXHIBIT C



US00D405705S

United States Patent [19]

Norcross

[11] Patent Number: Des. 405,705

[45] Date of Patent: **Feb. 16, 1999

[54] INDICATOR DEVICE AND UTENSIL FOR COOKING MEAT

[76] Inventor: Charles E. Norcross, 1448
Mediterranean Dr., Lake Clark, Fla.
33406

[**] Term: 14 Years

[21] Appl. No.: 90,220

[22] Filed: Jul. 2, 1998

Related U.S. Application Data

[63] Continuation of Ser. No. 14,221, Jan. 27, 1998.

[51] LOC (6) Cl. 10-04

[52] U.S. Cl. D10/57

[58] Field of Search D10/57; 374/141

[56] References Cited

U.S. PATENT DOCUMENTS

856,768 6/1907 Comins 374/141
5,575,563 11/1996 Chiu et al. 374/141

Primary Examiner—Antoine Duval Davis
Attorney, Agent, or Firm—Quarles & Brady LLP

[57] CLAIM

The ornamental design for an indicator device and utensil for cooking meat, as shown and described.

DESCRIPTION

FIG. 1 shows a perspective view of an indicator device and utensil for cooking meat according to my design;

FIG. 2 shows a top plan view thereof;

FIG. 3 shows a side view thereof. The opposite side is an identical, but mirror image thereof;

FIG. 4 shows a bottom plan view thereof;

FIG. 5 shows an end view thereof, as viewed from the handle end;

FIG. 6 shows an end view thereof, as viewed from the forked end;

FIG. 7 shows a top plan view of an embodiment of the indicator utensil handle illustrating a digital display window;

FIG. 8 shows a top view of a second embodiment of the indicator utensil handle illustrating a graduated display;

FIG. 9 shows a top plan view of a third embodiment of the indicator utensil handle illustrating a substantially circular analog (dial) display;

FIG. 10 shows a top plan view of a fourth embodiment of the indicator utensil handle illustrating a substantially rectangular analog (dial) display;

FIG. 11 shows the digital display of FIG. 7;

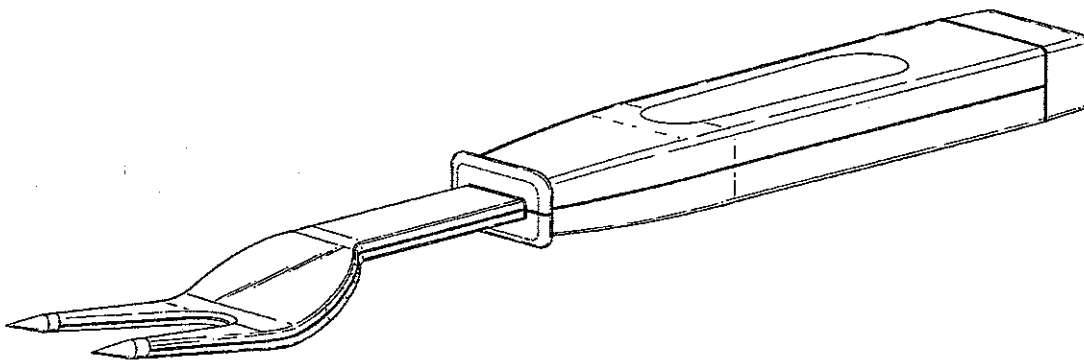
FIG. 12 shows the graduated display of FIG. 8;

FIG. 13 shows the substantially circular display of FIG. 9; and,

FIG. 14 shows the substantially rectangular display of FIG. 10.

The dotted lines indicate components for illustrative purposes only and form no part of the subject design.

1 Claim, 4 Drawing Sheets



U.S. Patent

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Sheet 1 of 4

Des. 405,705

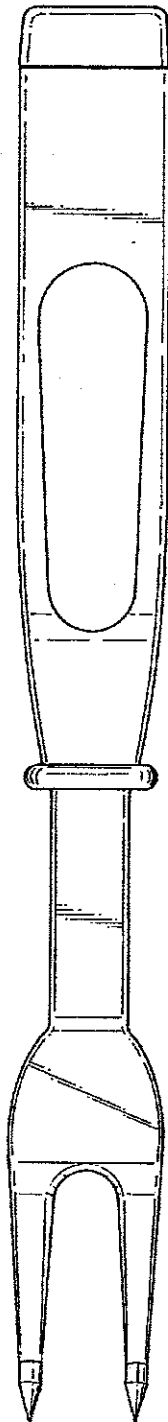


FIG. 2

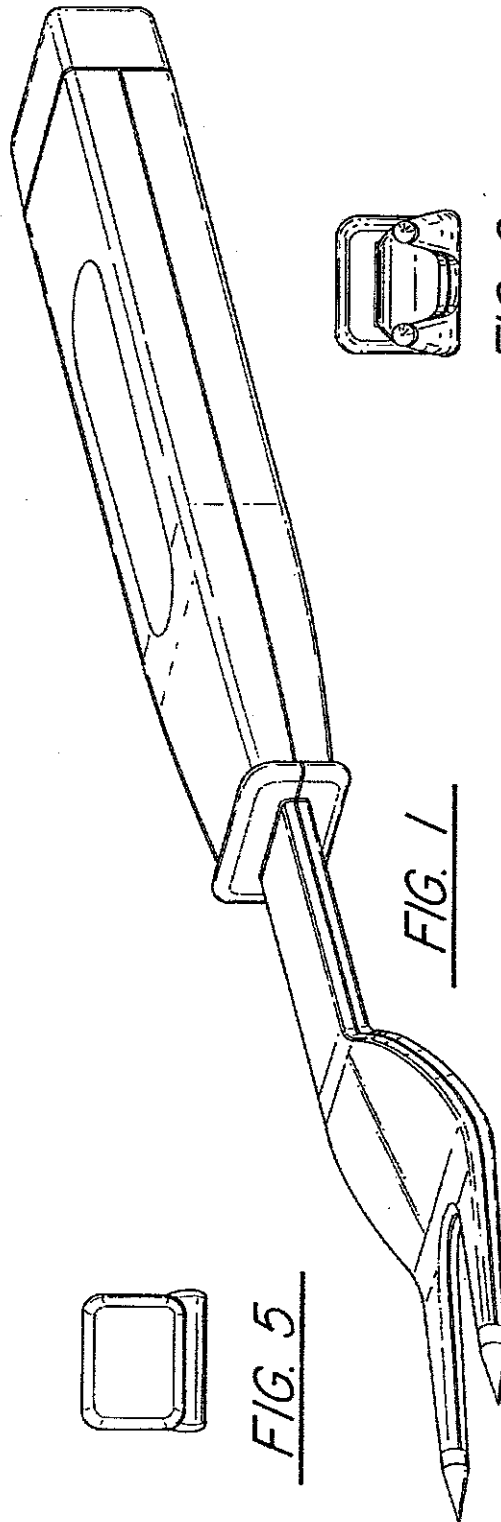


FIG. 1

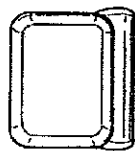


FIG. 5

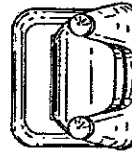


FIG. 6

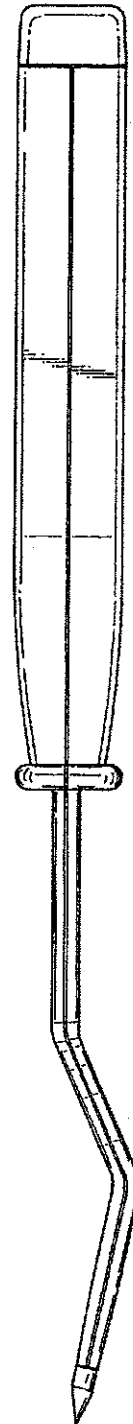


FIG. 3

U.S. Patent

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Des. 405,705

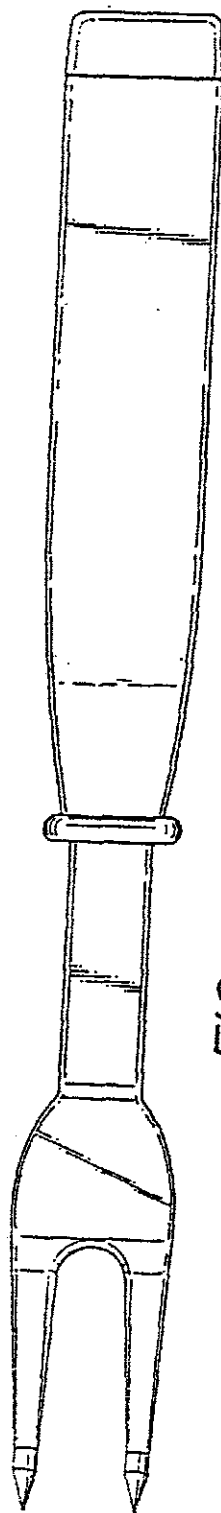


FIG. 4

U.S. Patent

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Des. 405,705

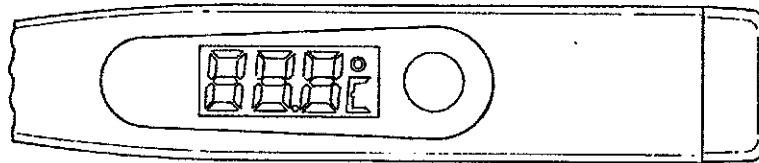


FIG. 7

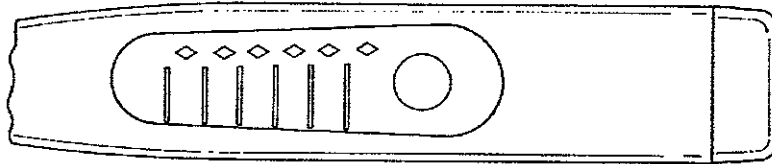


FIG. 8

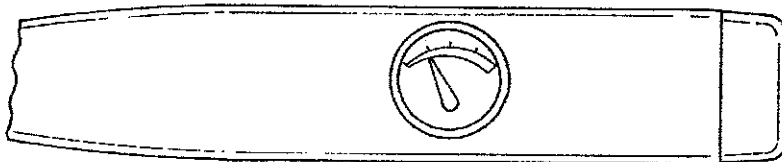


FIG. 9

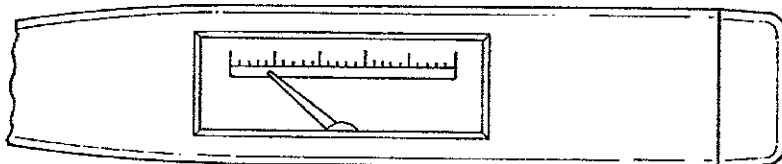


FIG. 10

U.S. Patent

Feb. 16, 1999

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Des. 405,705

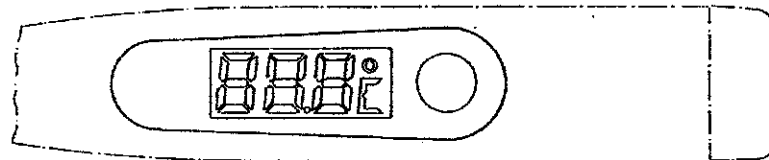


FIG. 11

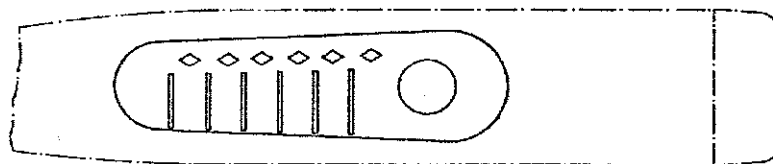


FIG. 12

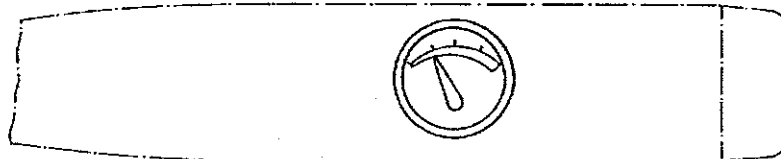


FIG. 13

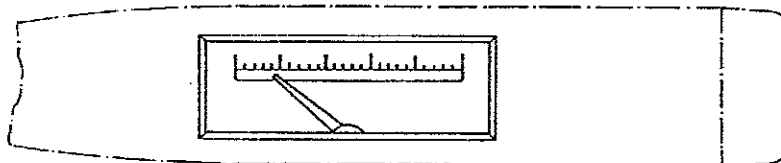


FIG. 14

EXHIBIT D

Tru ThermoFork

BBQ Style

INSTANT READ THERMOMETER

COOK LIKE A PROFESSIONAL

READ FOOD TEMPERATURE
INSTANTLY - FROM PARE
TO WELL DONE

USE WITH BARBECUES, OVENS
AND MICROWAVES

GREAT FOR BEEF, FISH, PORK
AND POULTRY

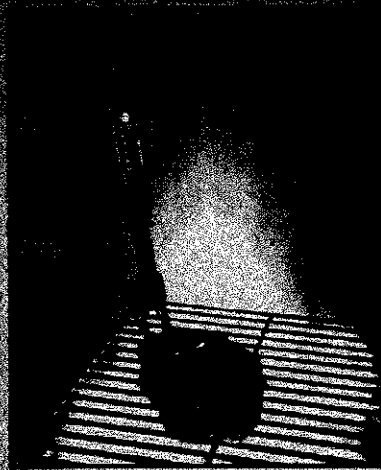


EXHIBIT E

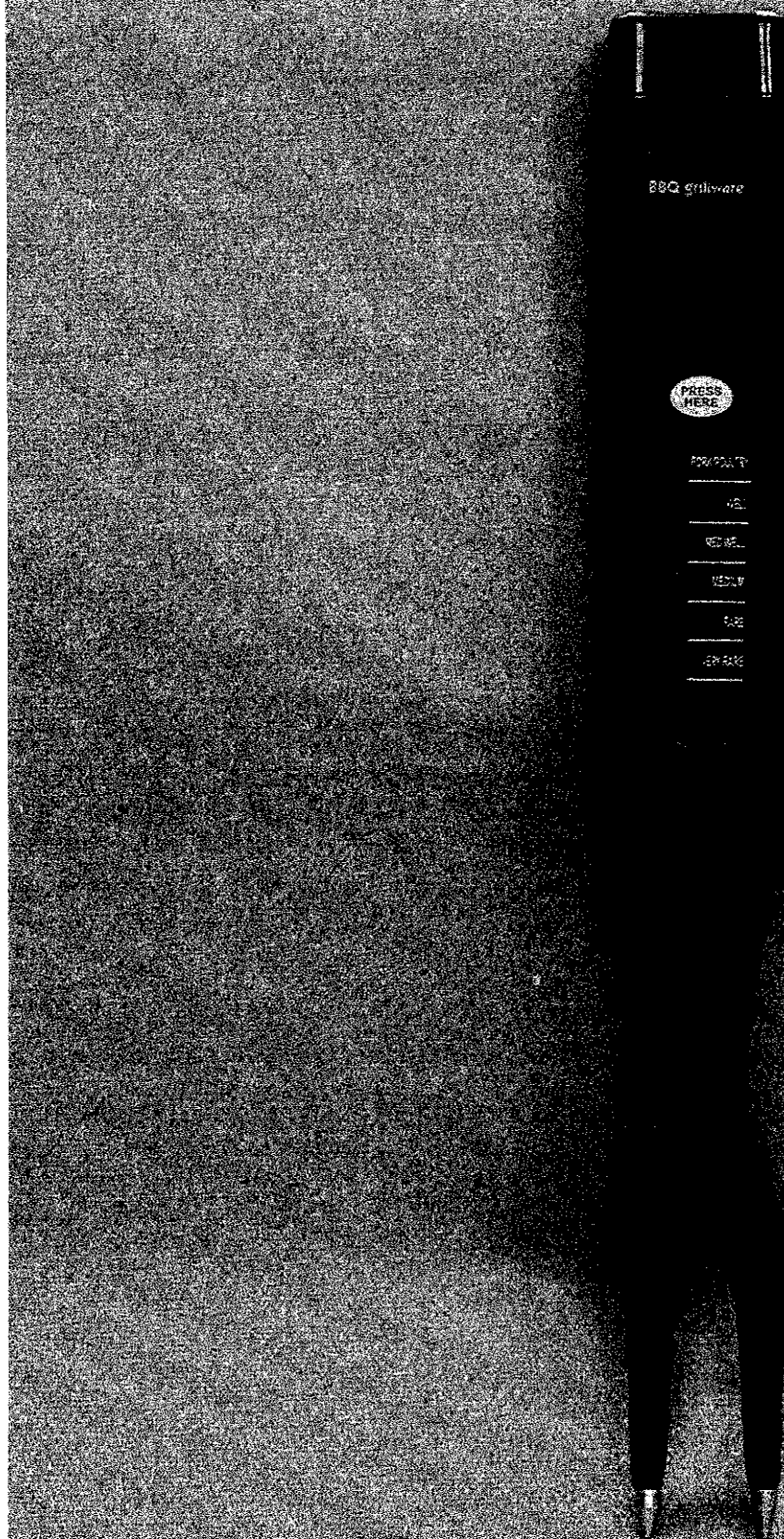


EXHIBIT F

JS 44
(Rev. 11/95)**CIVIL COVER SHEET**

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

TRUCOOK, INC.

DEFENDANTS

INTERNATIONAL BUSINESS CORPORATION

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Palm Beach, FL
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Richard D. Harris, James K. Cleland
LAW OFFICES OF DICK AND HARRIS
181 West Madison St., Ste. 3800
Chicago, IL 60602 (312)726-4000

ATTORNEYS (IF KNOWN)

JUDGE ANDERSEN

CLERK OF COURT JUDGE BROWN

U.S. DISTRICT COURT
02 JUN 27
FILEDDOCKETED
JUN 28 2002**II. BASIS OF JURISDICTION**

(PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

V. NATURE OF SUIT

(PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input checked="" type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutional of State Statutes <input type="checkbox"/> 990 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 Habeas Corpus General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 881 HIA (1395m) <input type="checkbox"/> 882 Black Lung (923) <input type="checkbox"/> 883 DIWC/DIWW (405(g)) <input type="checkbox"/> 884 SSID Title XVI <input type="checkbox"/> 885 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	

VI. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

Design Patent Infringement, Federal Trade Dress Infringement, Common Law Trade Dress Infringement, Illinois Anti-Dilution Act and Deceptive Trade Practices

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION
☐ UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND:

☒ YES ☐ NO**VIII. RELATED CASE(S) (See instructions): IF ANY**

JUDGE

DOCKET NUMBER

DATE

6/27/02

SIGNATURE OF ATTORNEY OF RECORD

Richard D. Harris

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS**

In the Matter of

TRUCOOK, INC.

Plaintiff,

v.

INTERNATIONAL BUSINESS CORPORATION

Defendant.

Case Number:

Judge

DOCKETED

JUN 28 2002

02C 4617

APPEARANCES ARE HEREBY FILED BY THE UNDERSIGNED AS ATTORNEY(S) FOR:

TRUCOOK, INC.

**JUDGE ANDERSEN
MAGISTRATE JUDGE
GERALDINE SOAT BROWN**

U.S. DISTRICT COURT
CLERK OF COURT
02 JUN 27 PM 4:31
FILED-E04

(A)				(B)			
SIGNATURE <i>Richard D. Harris</i>				SIGNATURE <i>James K. Cleland</i>			
NAME Richard D. Harris				NAME James K. Cleland			
FIRM Law Offices of Dick & Harris				FIRM Law Offices of Dick & Harris			
STREET ADDRESS 181 West Madison Street, Ste. 3800				STREET ADDRESS 181 West Madison Street, Ste. 3800			
CITY/STATE/ZIP Chicago, IL 60602				CITY/STATE/ZIP Chicago, IL 60602			
TELEPHONE NUMBER 312/726-4000				TELEPHONE NUMBER 312/726-4000			
IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE) 1137913				IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE) 6242689			
MEMBER OF TRIAL BAR?		YES	<input checked="" type="checkbox"/> NO <input type="checkbox"/>	MEMBER OF TRIAL BAR?		YES	<input type="checkbox"/> NO <input checked="" type="checkbox"/>
TRIAL ATTORNEY?		YES	<input checked="" type="checkbox"/> NO <input type="checkbox"/>	TRIAL ATTORNEY?		YES	<input type="checkbox"/> NO <input checked="" type="checkbox"/>
				DESIGNATED AS LOCAL COUNSEL?		YES	<input type="checkbox"/> NO <input checked="" type="checkbox"/>
(C)				(D)			
SIGNATURE				SIGNATURE			
NAME				NAME			
FIRM				FIRM			
STREET ADDRESS				STREET ADDRESS			
CITY/STATE/ZIP				CITY/STATE/ZIP			
TELEPHONE NUMBER				TELEPHONE NUMBER			
IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE)				IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE)			
MEMBER OF TRIAL BAR?		YES	<input type="checkbox"/> NO <input type="checkbox"/>	MEMBER OF TRIAL BAR?		YES	<input type="checkbox"/> NO <input type="checkbox"/>
TRIAL ATTORNEY?		YES	<input type="checkbox"/> NO <input type="checkbox"/>	TRIAL ATTORNEY?		YES	<input type="checkbox"/> NO <input type="checkbox"/>
DESIGNATED AS LOCAL COUNSEL?		YES	<input type="checkbox"/> NO <input type="checkbox"/>	DESIGNATED AS LOCAL COUNSEL?		YES	<input type="checkbox"/> NO <input type="checkbox"/>

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